BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 91-164-W/S - ORDER NO. 92-232

APRIL 1, 1992

IN RE: Application of Hilton Head Plantation Utilities, Inc. for Approval of Increased Rates and Charges for Water and Sewage Services Provided to Customers in its Service Area.	) ORDER) DENYING) REHEARING OR) RECONSIDERATION)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by the Petition for Rehearing or Reconsideration of Hilton Head Plantation Utilities, Inc. (the Applicant or the Company) who requested rehearing or reconsideration of our Order No. 92-115, issued on February 20, 1992. For the reasons stated herein, this Petition must be denied.

First, the Company alleges that the Order erroneously fails to set forth a specific and adequate statement of the findings of fact and conclusions of law required by S.C. CODE ANN.§1-23-350 (1976), as amended. This allegation is puzzling in that beginning on Page 4 of Order No. 92-115, findings of fact and conclusions of law are separately stated as required by the statute, under a heading "Findings of Fact and Conclusions of Law." Therefore, the Company's allegation that no specific and adequate statement of findings of fact and conclusions of law as required by the Code section is erroneous.

Second, the Company alleges that the Order erroneously gives probative effect to the statement of Protestant Richard Pilsbury, President of the Hilton Head Plantation Property Owners Association. The Company states that the Pilsbury statement does not constitute reliable and probative evidence of record. This Commission holds that the contrary is true. The statement of Pilsbury was very specific, and included specific numbers, dates, and parties to various transactions. The Commission believes that the Pilsbury statement is reliable, probative, and is significant evidence of record. Further, the numbers quoted by Pilsbury in his statement were verified by the Staff audit. See, Hearing Exhibit No. 3. The Company was well aware, in advance, of the matters cited by Pilsbury, as they were included in the financial statements submitted by the Company. See, Hearing Exhibit 2. However, the Company failed to address matters that they knew or should have known would have been of concern to this Commission, which included discussion of spray field rent, and the matter of the use of the Cypress Conservancy. The statement of Protestant Pilsbury was therefore probative.

Third, the Applicant questions the findings in Order No. 92-115, which question the propriety and reasonableness of the Company's expenses in connection with effluent dispersal license fees, spray field rental fees, management fees, accounting fees, and additional rate case expenses (accounting and data processing fees and attorneys fees). The Company claims that these findings are not supported by the substantial evidence of record. This is

erroneous. The findings in Order No. 92-115 are specifically supported by the statement of Pilsbury, and again, are supported by the Staff testimony and the results of the Staff audit. This allegation is without merit.

Fourth, the Applicant claims that the Order is erroneous in its finding that the validity of the operation and maintenance expenses and general expenses claimed by the Company is questionable. The Company claims that this finding is not based upon substantial evidence of record. Again, the statement of Protestant Pilsbury constituted substantial evidence in the record to support the Staff's questioning of the dispersal license fees, spray field rental fees, and other matters.

The Applicant also alleges that the Commission erroneously found that the approval of the Cypress Conservancy dispersal license agreement and the spray field rental agreement was required by Commission Regulation R.103-541. The Company submits that R.103-541 is inapplicable to these agreements. The Commission holds that the contrary is true. The language of R.103-541 is as follows:

> No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation, or any agency of the federal, state, or local government which would impact, pertain to, or affect said utility's fitness, willingness, or ability to provide sewer service, including but not limited to the collection or treatment of said sewerage, without first submitting said contract in form to the Commission in obtaining approval of the Commission.

The Company alleges that no prior notice was given to the Company that approval of these contracts would be required in this

proceeding. The Commission notes that no prior notice is needed. The regulation in question became effective on June 27, 1986, therefore, any contracts that were contemplated after that time, automatically become subject to the provisions of that regulation. Further, this Commission holds that the Regulation is specifically applicable, since it states that no utility shall enter into any contract which would "impact, pertain to, or affect said utility's fitness, willingness, or ability to provide sewer service,...." Clearly, the contracts contemplated herein would impact the utility's fitness to provide sewer service. Since the utility was paying $12,000 per month for spray dispersal rights, and some $90,000 a year to the Hilton Head Property Association for use of the Cypress Conservancy for dispersal, such figures bring into direct question the fitness, willingness, or ability of the Company to provide sewer service, since such considerable sums of money are being expended by the Company. The regulation is therefore applicable.

Next, the Applicant states that it believes that the Order erroneously finds that transactions between the Company and affiliated companies were less than "at arm's length." Again, this finding is supported by the reliable and probative statement of Protestant Pilsbury. His testimony raises clear questions about the relationship between the utility and its parent partnership, matters which the Company did not address either in its Application or in its case.

Further, the Company alleges that the Order erroneously denies

the Company's request for increased rates and charges for water and sewer service. It states that the overwhelming evidence of record demonstrates that under the present rates, the Company has a negative operating margin. The Company goes on to state that it is authorized by law to earn a fair rate of return on its operations and investments used and useful in providing public utility services, and that the Order denies the Company a fair rate of return. The Commission notes that a negative operating margin does not necessarily mean that a company is not earning a fair rate of return on its operations and investments. The Commission takes judicial notice of Order No. 92-140, Docket No. 90-781-W/S, dated March 2, 1992, Hartwell Utilities, Inc., in which, after the Commission heard all the evidence, granted the company permission to earn an operating margin of (108.74%). Likewise, the Commission takes judicial notice of Order No. 92-114, Docket No. 91-041-W/S, dated February 27, 1992 in the Application of CUC, Inc., which allowed the company to earn a negative operating margin of (51.91%). Therefore, Commission precedent dictates that, although we look at each case on its individual merits, a negative operating margin does not necessarily mean that the company has the right to earn enough funds to allow it to operate under a positive operating margin, as these two cases illustrate. Therefore, the allegation concerning Order No. 92-115 denying the Company a fair rate of return is without merit.

The Applicant states that the Order erroneously fails to specify an allowable operating margin as required by S.C. CODE

ANN.§58-5-240(H) (1976), as amended. It should be noted that Finding of Fact and Conclusion of Law No. 9 states that the Commission finds and concludes that the present rates as granted to the utility by the July 10, 1987 Order, are just and reasonable, thereby incorporating the provisions of that Order (Order No. 87-720) by reference. No operating margin was included therein, therefore no violation of the law or of the statute has occurred.

Finally, the Company alleges that Order No. 92-115 erroneously finds that the Company notice to commercial customers was inadequate to allow those customers to determine the true amount of rate change likely to occur. The Commission does not deny, as the Company alleges, that the notice given by the Company was in accordance with instructions provided by the Executive Director of the Commission. However, the Commission is only stating "after the fact" and after hearing all the evidence in the case that the notice as published resulted in inadequate notice to the commercial customers. This was not cited by the Commission to be a particular ground for denial, but was only a comment on the end result. The Commission was merely making a suggestion to the Company that, in the future, it needs to examine its notification process of the commercial customers.

Based on all the above-stated reasoning,

IT IS THEREFORE ORDERED:

1. That the Petition for Rehearing or Reconsideration filed by Hilton Head Plantation Utilities, Inc. is hereby denied.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Marjorie Amos-Frazier
Chairman

ATTEST:

Executive Director

(SEAL)